

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 117 OF 2014

Suhash S/o Bhanudas Jadhav,
Age-35 years, Occu.- Business,
R/o Krishidhan Society, Ekmat Chowk
Dist. Latur.

...Appellant
(Ori. Complainant)

versus

1. Sachin S/o Murlidhar Tarkase,
Age-39 years, Occu- Service,
R/o Nirmal Bang Securities,
Shop No. 101,102 & 103,
Yash Plaza, Above the Bank of
Commerce, In front of Shivneri
Gate, Market Yard, Kava Road,
Latur.

(Ori. Accused)

2. The State of Maharashtra,
Through Police Station, Latur.

...Respondents

.....

Mr. Manoj D. Shinde, Advocate for Appellant
Mr. R.R. Chandak, Advocate for respondent No. 1
Smt.R.K. Ladda, A.P.P. for respondent No. 2

.....
CORAM : A.I.S. CHEEMA, J.

DATED : 22nd JANUARY, 2015

Order :-

1. Heard learned counsel for the appellant -original complainant and respondent No. 1- accused.

2. Perused the record. Learned counsel for the appellant submitted that judgment of the trial court acquitting respondent No. 1 – original accused cannot be maintained. According to him, the trial court erred in invoking Section 23 illustration (f) of the Indian Act of 1872, (hereinafter referred to as “Contract Act” for short). He submits that the complainant has proved that respondent No. 1- accused had received money from him for securing the job, but he did not secure the job for the complainant in Nirmal Bang Securities Company (hereinafter referred to as “Company” for short), where the accused was working as Area Manager.

3. Learned counsel for the appellant submits that against such transaction cheque issued, bounced. The matter was relating to private service and not public service and so illustration (f) of Section 23 of the Contract Act could not have been invoked by the trial Court. Learned counsel for the appellant placed reliance on the judgment in the case of **Fancis Mathew Vs. State of Kerla** reported in **2005 ALL MR (Cri.) Journal, 251** and submits that in that matter also there was similar transaction to get service in Premier Tyres and the service was not secured and the High Court of

Kerla held that accused who had promised to arrange a job for brother of the complainant, had failed to get job and when the complainant demanded back the money, accused had issue cheque which had bounced. Learned counsel further submits that it was held that the accused could not be permitted to be benefited by retaining the amount which he had received unlawfully and illegally.

4. Learned counsel for respondent No. 1- accused is opposing the application and supported the reasons recorded by the trial court.

5. There is no dispute regarding the fact that the respondent No. 1-accused was working in the said Company. The case of the complainant is that accused informed that there was a post of Branch Manager in the company and he could manage the same for the complainant with the help of Company Manager, for which complainant would have to incur expenses. The complainant had given consent and paid amount of Rs. 1,00,000/- to the accused in presence of the witnesses as mentioned. Similarly another Rs.25,000/- was paid. According to the

complainant, accused told him that the amount has been paid to Mr. Kulkarnisaheb of the Company at Mumbai and to Vikrant Darak Officer at Pune and assured the complainant that he will get order within few days. According to the complainant, accused asked for further amounts, which were paid and thus total amount of Rs. 1,45,000/- was given to the accused. Subsequently, accused denied that he will secure the job. Thus complainant demanded money back. Then, cheque was issued by accused which, however bounced and then prosecution under section 138 of the Negotiable Instruments Act was filed.

6. The trial court invoked Section 23 of the Contract Act and relied on illustration (f) and has acquitted respondent No. 1-accused.

7. I have gone through the judgment in the matter Francis Mathew Vs. State of Kerala (supra), relied on by the learned counsel for the appellant. In similar set of facts, the Kerala High Court has observed that accused cannot be permitted to be benefited by retaining the amount which was received unlawfully and illegally. However, I am

unable to agree that in a transaction in which parties are indulging in unlawful and illegal activity the machinery of the court can be used for recovery of such money, which is clearly against public policy.

8. Illustration (f) of section 23 of the Contract Act refers to “public service”. It is only an illustration which is required to be referred for guidance to interpret the main Section. Section 23 reads as under:

“23. What considerations and objects are lawful, and what not:- The consideration or object of an agreement is lawful, unless-

It is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

(Emphasis supplied)

. **Illustration (f) reads as under:-**

"A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupees to A. The agreement is void as the consideration for it is unlawful."

9. It cannot be said that when such act is unlawful in public service it would be lawful in private sector. Such acts are not in interest of society. No employer would appoint a person whom he will give salary if he is not competent. His Subordinates cannot indulge in such acts at the costs of the Employer. It is trite to suggest that a Manager who without letting Company know makes money while making appointments does not indulge in unlawful act. This cannot be in interest of public life in society. It would be against public policy.

10. The view taken by the trial Court is possible view of the evidence available and once acquittal is recorded, it will not be appropriate to interfere.

11. There is no substance in the Appeal. The Admission of Criminal Appeal is declined.

Sd/-

(A.I.S. CHEEMA, J.)

MTK